CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11617 of 2016

[Arising out of Order-in-Appeal No OIA-AHM-EXCUS-001-APP-007-2016-17 dated 02.06.2016 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

Madhu Hydrocollides P. Limited .... **Appellant**
308, Ratna Complex, opp. Bank Of Baroda
Maninagar Char Rasta, Maninagar
AHMEDABAD, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
C. Ex Bhavan, Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat -380015

APPEARANCE :

Shri S.R. Dixit, Advocate for the Appellant
Shri Sanjiv Kinker, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11104 / 2020

DATE OF HEARING : 05.12.2019
DATE OF DECISION : 04.06.2020

RAMESH NAIR :

The brief facts of the case are that the appellant had cleared the excisable goods on payment of duty to ONGC and the supplies were against the International Competitive Bidding which were otherwise exempted under the Notification No. 12/12-C.E. (Sl. No.336). Since the goods were exempted they claimed refund claim of the duty so paid. The Adjudicating authority rejected the claim vide order-in-original dated 25.02.2014 on the ground of being time barred. However upon an appeal filed by the appellant before the Commissioner (Appeals), the Commissioner (Appeals) held the refund is within time vide his order dated 11.6.2014. This order was challenged by the revenue by filing appeal before the CESTAT. The CESTAT remanded the matter to the adjudicating authority keeping all the issue open. In the remand proceeding the adjudicating authority once again issued a fresh show cause notice dated 13.10.2014. However the adjudicating authority adjudicating the said show cause notice sanctioned the refund claim vide order-in-original dated 18.2.2015. Being aggrieved by the said OIO, the revenue filed an appeal before the Commissioner (Appeals) who allowed the appeal. Therefore the present appeal.

2. Shri Saurabh Dixit, learned Counsel appearing on behalf of the appellant argued in length on various issues and filed a detailed synopsis which is taken on record. One of the vital submissions made by Mr. Dixit is that the second show cause notice after remand by the Tribunal in the first round is illegal in the light of Hon’ble Apex court judgment in the case of Carrier Aircon Limited -2005(184) ELT 113 (SC). He also placed reliance on the judgment in the case of Shree Krishna Nylon Pvt. Limited vs. CCE, Mumbai – 2015 (327) ELT 626 (Tri. Mumbai).

3. Shri S. Kinker, Learned Superintendent (Authorised Representative) appearing for the revenue reiterates the findings of the impugned order. He also placed reliance on the following judgment and Board’s circulars:

(a) Arvind Limited vs. UOI – 2014 (300) ELT 481 (Guj.)

(b) Board Circular No. 940/1/2011-CX dated 14.01.2011

4. We have heard both the sides and carefully considered the submissions made. We find that the appellant has raised very important issue that whether revenue is legally right in issuing the second time show cause notice in the same case. However, this vital issue was not answered by the Learned Commissioner (Appeals) in the impugned order. In our view,

since the second show cause notice dated. 13.10.2014 is the genesis of the present case, without dealing the issue of legality of issuance of said show cause notice the entire finding given by the Learned Commissioner (Appeals) is of no meaning. Therefore in our considered view the matter should go back to the learned Commissioner (Appeals) for passing a fresh order taking into consideration of our above observation and after following the principles of natural justice.

The impugned order is set aside and appeal is allowed by way of remand to the Commissioner (Appeals).

(Pronounced in the open court on 04.06.2020*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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